

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
December 17, 2007**

Members Present:

Michael Villyard
Gene Camargo
Liz Victor
Edward Hardemon
Helen Dutmer
Paul Klein
Mary Rogers
Andrew Ozuna
Maria D. Cruz
Mimi Moffat

Staff:

Fernando De Leon, P.E. Asst. Dir.
Ted Murphree, Asst. City Attorney
Christopher Looney, Planning Manager
Rudy Nino, Jr. Senior Planner
David Arciniega, Planner
Michael Farber, Planner
Jennifer Gallegos, EIT, Sr. Eng. Associate
David Simpson, Chief Sign Inspector

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Villyard, Chairman, called the meeting to order and called roll of the applicants for each case.

CASE NO. A-08-017

Applicant – Diana Fuentes
Lot 123, Block 12, NCB 18712
5931 Cliff Ridge
Zoned: "R-6" Residential Single-Family District

The applicant is requesting a Special Exception to continue to operate a one operator beauty shop in a residential area.

David Arciniega, Planner, presented background and staff's recommendation of approval on this case. He indicated 40 notices were mailed, 1 notice was returned in favor and 0 notices were returned in opposition and no response from Great Northwest Neighborhood Association.

Diana Fuentes, applicant, stated she is requesting this Special Exception because she can manage her own hours and it helps her watch and care for her teenage daughter. She also stated her neighbors like the salon.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-017 closed.

MOTION

A motion was made by **Ms. Rogers** regarding Appeal No. **A-08-017**, an Exception, Subject Property Description **Lot 123, Block 12, NCB 18712**, located at **5931 Cliff Ridge**, the applicant is **Diana Fuentes**. I move that the Board of Adjustment grant the applicant's request regarding this appeal for a Special Exception for the subject property as described above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirement listed in UDC 35-399.01. Specifically, we find that the following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of the chapter in that **there have been no violations reported on this property**. The public welfare and convenience will be substantially served in that **the shop will serve the people in the neighborhood**. The neighboring property will not be substantially injured by such proposed use in that **adequate parking is available for a one customer shop and there is no noise factor involved and the neighbors apparently approve of this shop**. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought in that **the shop is contained within the home and does not alter the exterior of the house in any way changing the neighborhood**. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **it does not weaken the overall zoning of the area nor have a negative impact on the surrounding area**. The operational conditions are **hours of operation: Monday, Tuesday, Thursday 10 a.m. to 2 p.m., Friday 10 a.m. to 2 p.m. and Saturday 9 a.m. to 12 p.m. as stated by the agenda**. The motion seconded by **Mr. Hardemon**.

AYES: Rogers, Hardemon, Moffat, Ozuna, Cruz, Klein, Dutmer, Camargo, Victor, Villyard

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-08-018

Applicant – Mary Alice Alvarez
Lot 10, Block 5, NCB 12455
326 Eastley
Zoned: "R-6" Residential Single-Family District

The applicant is requesting a Special Exception to operate a one-operator beauty shop in a residential area.

Michael Farber, Planner, presented background and staff's recommendation of approval of this variance. He indicated that there were 32 notices mailed, 2 notices were returned in favor and 0 notices were returned in opposition.

Mary Alice Alvarez, applicant, stated the reason she let her special exception expire was because she was going through a divorce and she was in a car accident.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-018 closed.

MOTION

A motion was made by **Ms. Cruz**. In Reference Appeal No. **A-08-018**, application for a one-operator beauty shop in a residential area Special Exception of Subject Property Description **Lot 10, Block 5, NCB 12455**, located at **326 Eastley**, applicant is **Mary Alice Alvarez**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-08-018**, application for a Special Exception for the subject property as described above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirement listed in UDC 35-399.01. Specifically, we find that the following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of the chapter in that **this applicant has been successful all these past years**. The public welfare and convenience will be substantially served in that **it is serving as a small business in a neighborhood**. The neighboring property will not be substantially injured by such proposed use in that **there is plenty of parking for the beauty shop entrance**. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought in that **the shop continues within the home**. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **it does not impact zoning and uses allowed by Chapter 35**. Optional conditions may be established: **hours of operation will be Monday thru Friday from 9 a.m. to 4 p.m. and will be closed on Saturdays and Sundays**. The duration of the special exception will be for two years. The motion seconded by **Ms. Dutmer**.

AYES: Cruz, Dutmer, Victor, Camargo, Hardemon, Moffat, Rogers, Klein, Ozuna, Villyard

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-08-019

Applicant – Javier Ortiz
Lot 12, Block 24, NCB 2094
1802 West Laurel Street
Zoned: "MF-33" Multi-Family District

The applicant is requesting a **1) a 2-foot variance** from the Unified Development Code requirement that predominantly open fences in front yards be no taller than 4 feet in order to keep a 6-foot tall predominantly open fence in the front yard, and **2) a 3-foot variance** from the

Unified Development Code requirement that clear vision areas be free of visual obstructions which are higher than three feet above the pavement, in order to allow a 6-foot tall predominantly open fence to encroach into the clear vision area of a corner intersection and abutting driveways in the front yard.

David Arciniega, Planner, presented background and staff's recommendation of denial. He indicated that 34 notices were mailed, 1 notice was returned in favor and 0 notices were returned in opposition and no response from Prospect Hill Neighborhood Association.

Javier Ortiz, applicant, stated he is requesting this variance for security. He further stated that some of his belongings have been stolen from his property. He also stated he would be satisfied with a 5-foot fence.

Jennifer Gallegos, Senior Engineering Associate, stated there is a vision obstruction in the clear vision area. Her concern was the traffic that passed through the intersection.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-019 closed.

MOTION

A motion was made by **Mr. Klein**. I'm making a motion for request No. 1, Re. Appeal Case No. **A-08-019**, this is a variance for a 2-foot variance from the Unified Development Code requirement that predominantly open fences in front yards be no taller than 4 feet in order to keep a 6-foot tall predominantly open fence in the front yard that does not conflict with the clear vision requirement, subject property more fully describe as **Lot 12, Block 24, NCB 2094, 1802 West Laurel Street**, the applicant is **Javier Ortiz**. I move that the Board of Adjustment grant the applicants request regarding this appeal for a variance application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **the 34 notices mailed indicate one in favor, no opposition, and that the community is generally in favor with this request**. Due to the special conditions, a literal enforcement of the ordinance would result in an unnecessary hardship in that **while a variance is necessary as being requested this fence is very close to conforming to the open fence requirements that have been recently passed by City Council with the exception of spacing between vertical ballisters**. The spirit of the ordinance if observed and substantial justice is done in that **no other changes to the land is sought by this applicant**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **the zoning is "MF-33" Multi-Family District, the existing use is Single-Family residence and this variance does not affect either of those**. Such variance will not substantially or permanently injure the district in which that variance is sought in that **the applicant is seeking for securing his property and such fences of this type are generally found through out the district**. Such variance will not

alter the essential character of the districts in which the variance is sought in that **this particular property on a corner of North Calaveras and West Laurel is unpaved and this fence will add additional security to the applicant's property.** Such variance will be in harmony with the spirit and purpose of this chapter **in that fences to safeguard properties are allowed under Chapter 35 under certain conditions.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **the applicant has indicated a necessary to construct this fence which is well done, well performed, and will help to safeguard his property.** The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specified district in that **the zoning is not changed with this particular variance request.** The variance will not adversely affect the public health, safety or welfare of the public in that **this variance does not address the applicant's request for encroachment into the clear vision area.** The motion seconded by Mr. Camargo.

AYES: Klein, Camargo, Moffat, Dutmer, Cruz, Rogers, Victor, Ozuna, Hardemon, Villyard

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-08-022

Applicant – Benigno Sepulveda III
Lot 6, Block 3, NCB 14427
3230 Aragon Drive
Zoned: "R-4" Residential Single-Family District

The applicant is requesting a 4-foot, 6 inch variance from the minimum 5-foot side setback required in "R-4" Zoning districts, in order to keep an existing carport 6 inches from the side property line.

David Arciniega, Planner, presented background and staff recommends denial. He indicated that 32 notices were mailed, 0 notices were returned in favor and 0 notices were returned in opposition.

Saria Z., representative, stated the applicant was not aware of the setback and that permits were to be taken out before construction. She also stated Mr. Sepulveda's wife took care of the construction. She further stated the applicant wanted protection for his property.

Benigno Sepulveda III, applicant, stated he is will build a firewall if he is instructed to.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-022 closed.

MOTION

A motion was made by **Mr. Ozuna**. Regarding Appeal No. **A-08-022**, variance application for **3230 Aragon Drive**, subject property description **Lot 6, Block 3, NCB 14427**, located at **3230 Aragon Drive**, the applicant is **Benigno Sepulveda III**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-08-022** application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that **the applicant's request for a 4-foot, 6-inch variance from the minimum 5-foot side setback required in "R-4" Zoning districts, in order to keep an existing carport 6 inches from the side property line**. We find that such variance will not be contrary to the public interest in that **no other variances are being requested and the applicant has vowed that he will maintain or be subject to the fire code or fire rated wall and the existing zoning will remain as is**. Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the character of the neighborhood is such that these carports have been accepted and are probasis throughout the neighborhood and the applicant is using the carport for protection for his cars**. So that the spirit of the ordinance is observed and substantial justice is done in that **again the variance is being requested to protect his cars**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought located in that **the existing "R-4" zoning will remain and no other changes to the land use is being requested**. Such variance will not substantially or permanently injure the district in which the variance is sought in that **with all the mailings to the neighborhood there was no negative response and the neighborhood association was in favor by negligence no opposition**. Such variance will not alter the essential character of the districts in which the variance is sought in that **we have seen through evidence, through pictures that such carports are an excepted use within the neighborhood**. Such variance will be in harmony with the spirit and purpose of this chapter in that **again no other land uses or changes to the existing "R-4" zoning will remain through**. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **the existing structure when built did not have an enclosed garage so the applicant is merely trying to protect his property with a garage that is already existing**. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **again the "R-4" zoning district will remain through the property and the applicant will build to the existing fire codes including a firewall for the property**. The variance will not adversely affect the public health, safety or welfare of the public in that **again the borrower not only has gutters to protect the watershed runoff for the neighbors but will build a firewall**. The motion was seconded by Ms. Rogers.

AYES: Ozuna, Rogers

NAY: Moffat, Klein, Cruz, Dutmer, Victor, Camargo, Hardemon, Villyard

THE VARIANCE WAS NOT GRANTED.

Case No. A-08-021 has been continued to January 7, 2008 as per the applicant's request.

Board Members took a 10 minute recess.

CASE NO. A-08-023

Applicant – Charles S. Gottsman

The northeast 184 feet of the southwest 274 feet of Lot 36, Block 6, NCB 13266

2939 Mossrock

Zoned: "O-2" Office District

The applicant is requesting a 48-foot variance from the requirement in Chapter 28 that lots within 500 feet of the expressway, but without expressway frontage, may have expressway standard signs provided that the signs be setback a minimum of 100 feet from the nearest street easement or right-of-way, in order to allow a sign to be 52 feet from the nearest street easement.

David Arciniega, Planner, presented background and staff's recommendation of denial of this variance. He indicated that there were 32 notices mailed, 0 notices were returned in favor and 2 notices were returned in opposition.

Larry Gottsman, applicant, stated he is requesting this variance because he needs it so it could be seen from the interstate. He also stated the lawyer's office next door to him has the same size sign he is requesting.

David Simpson, Chief Sign Inspector, stated he could not prohibit a digital sign today.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-023 closed.

MOTION

A motion was made by **Mr. Camargo**. I would like to move that in Case A-08-023, the request of **Charles S. Gottsman**, on property located at **2939 Mossrock**, also known by the legal description of **northeast 184 feet of the southwest 274 feet of Lot 36, Block 6, NCB 13266**, be granted the variance which is being requested in this specific case and that being a **48-foot variance from the requirement in Chapter 28 that lots within 500 feet of the expressway, but without expressway frontage, may have expressway standard signs provided that the signs be setback a minimum of 100 feet from the nearest street easement or right-of-way, in order to allow a sign to be erected 52 feet from the nearest street easement**. From the information that has been submitted to the board by the applicant it is felt that the variance is

necessary because strict enforcement of the requirements and regulations would prohibit an reasonable opportunity to provide adequate signs **specifically I am addressing a requirement that on sites such as this for signs of this height you must maintain a 200-foot setback from the adjacent residential area so therefore it places the applicants request might say in double jeopardy in that either you move the sign to the front towards the street and violate one section of the code or you move it closer to the residential area and you violate another section of the code. So it's a situation that this owner of this property is placed and that either way in order to construct an allowable sign within 500 from an expressway to this height a variance is necessary from this board. It is felt that the placement of an on-premise sign nearer to the commercial street Mossrock rather than nearer to the residential would be in the best interest of the surrounding area. The granting of the variance will not have a substantially adverse impact upon neighboring properties and basically for the reasons I stated being closer to the commercial street is less intrusive to the adjacent residential area. Granting the variance does not provide the applicant with any special privilege not enjoyed by others similarly situated in the particular area. We have been show photos of other signs whether they were constructed or not prior to this specific requirement of the code exist along Mossrock in this area. The motion seconded by Mr. Hardemon.**

AYES: Camargo, Hardemon, Klein, Victor, Ozuna, Cruz, Rogers, Villyard, Dutmer

NAY: Moffat

THE VARIANCE WAS GRANTED.

CASE NO. A-08-024

Applicant – Drury Southwest, Inc.
The south 73.23 feet of Lot 37, Block 9, NCB 8672
8818 Jones Maltsberger Road
Zoned: “C-3” Commercial District

The applicant is requesting a appealing the decision of the Chief Sign Inspector to issue a stop work order for the reconstruction of an on-premise free-standing pole sign, and the interpretation of 28-245 by the Chief Sign Inspector that the reconstruction of an on-premise freestanding sign cabinet from a nonconforming sign, without first obtaining the proper approvals, resulted in the termination of nonconforming rights to the sign.

David Arciniega, Planner, presented background and staff recommends that the Board uphold the decision of the Chief Sign Inspector for the Development Services Department. He indicated that there were 32 notices mailed, 3 notices were returned in favor and 0 notices were returned in opposition.

David Simpson, Chief Sign Inspector, stated the applicant reconfigured the sign which meant he lost his nonconforming rights. He also stated permits were issued for a reface not reconfiguration.

Charles Eden, representative, stated he is requesting this appeal because it is not a reconstruction of the sign. He also stated it is reconfiguration to remove the trademark logo that was on the existing sign due the relocation of the Hampton Inn. He further stated it could cause a trademark infringement and a case for litigation.

The following citizen(s) appeared to speak:

Kevin Whitfield, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-024 closed.

MOTION

A motion was made by **Mr. Klein**. Re Appeal Case No. A-08-024, in this particular case the applicant is appealing the decision of the Chief Sign Inspector to issue a stop work order for the reconstruction of an on-premise free-standing pole sign, and the interpretation of Section 28-245 by the Chief Sign Inspector that the reconstruction of an on-premise freestanding sign cabinet from a nonconforming sign, without first obtaining the proper approvals, resulted in the termination of nonconforming rights to the sign, the subject property is legally described as the south 73.23 feet of Lot 37, Block 9, NCB 8672, the address is 8818 Jones Maltsberger Road, it is zoned "C-3" Commercial District, the existing use is hotel/motel, the applicant is **Drury Southwest Inc.**, the owner listed on the board information is **Auburn Investments Inc.** I move that the Board of Adjustment recommend granting the applicant's request that the decision of the inspector regarding this appeal case because the testimony and the facts presented to this board are persuasive. **I believe that the applicant has indicated that there was intent to reface the sign and the work that they had proposed under the permit they submitted did comply with the work that was done.** The motion seconded by **Mr. Camargo**.

AYES: Camargo, Hardemon, Cruz, Rogers, Ozuna, Dutmer

NAY: Klein, Moffat, Victor, Villyard

THE APPEAL WAS NOT GRANTED.

Board Members took a 5 minute recess.

CASE NO. A-07-075

Applicant – Dalia Munoz Sosa
Lot 30, Block 38, NCB 9448
1311 Logwood
Zoned: "MF-33" Multi-Family District

Presentation of new evidence and a request by Dalia Munoz to re-open Case Number A-07-075 and waive the 1-year time limitation for an appeal for property addressed at 1311 Logwood Avenue

MOTION

Mr Klein made a motion to reopen case No. 07-075. Ms. Dutmer seconded the motion.

AYES: None

NAY: Klein, Dutmer, Camargo, Hardemon, Victor, Cruz, Rogers, Moffat, Villyard, Ozuna

THE MOTION FAILED.

Mr. Camargo left at 5:25 p.m.

Sign Master Plan No. 08-003

David Simpson, Chief Sign Inspector, brief Board Members on Sign Master Plan for Seguin and Woodlake, located at Seguin Road and Woodlake Parkway.

Sign Master Plan No. 08-003 was voted on and approved with all members voted in affirmative.

Sign Master Plan No. 08-004


David Simpson, Chief Sign Inspector, brief Board Members on Sign Master Plan for Stone Ridge Market, located at Evans Road and U.S. Highway 281 North.

Sign Master Plan No. 08-004 was voted on and approved with all members voted in affirmative.

Approval of the Minutes

Ms. Dutmer moved to approve the minutes of December 3, 2007 and was seconded by **Mr. Hardemon** and all members voted in the affirmative.

Ms. Cruz moved to approve the minutes of October 16, 2006 and was seconded by **Ms. Rogers** and all members voted in the affirmative. **Ms. Victor** and **Ms. Dutmer** abstained.

APPROVED BY:  OR Michael Gallagher, Vice-Chair
D. Mike Villyard, Chairman

ATTESTED BY: Christopher J. Looney DATE: 1-7-08
Christopher J. Looney
Development Services, Planning Manager